

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| RICHARD A. RYAN,            | ) |                                |
|                             | ) | Civil Action No. 2: 19-cv-0542 |
| Petitioner,                 | ) |                                |
|                             | ) |                                |
| v.                          | ) | Judge Marilyn R. Horan         |
|                             | ) |                                |
| MALINDA ADAMS,              | ) |                                |
| SUPERINTENDENT, DISTRICT    | ) |                                |
| ATTORNEY OF ALLEGHENY       | ) |                                |
| COUNTY, ATTORNEY GENERAL OF | ) |                                |
| THE STATE OF PENNSYLVANIA,  | ) |                                |
|                             | ) |                                |
| Respondents.                | ) |                                |

**MEMORANDUM ORDER**

Richard A. Ryan, proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus by a Person in State Custody (the “Petition”) pursuant to 28 U.S.C. § 2254, challenging the judgment of sentence imposed on him by the Court of Common Pleas of Allegheny County, Pennsylvania, on April 27, 2016. The case was referred to Chief United States Magistrate Judge Cynthia Reed Eddy for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges.

Respondents filed a Motion to Dismiss seeking to have the Petition dismissed on the grounds that the Petition was filed well outside the AEDPA’s applicable statute of limitations. (ECF No. 8). Ryan filed a Response in opposition. (ECF No. 12).

On August 13, 2019, Chief Magistrate Judge Eddy filed a Report and Recommendation (“R&R”) recommending that the Petition be dismissed with prejudice as untimely and that a certificate of appealability be denied. (ECF No. 13). The parties were served with the R&R and

advised that any objections by Petitioner must be filed by September 3, 2019, and any objections by Respondents must be filed by August 28, 2019. On September 5, 2019, when the Court had not received any objections or a request for an extension of time by any party, the Court entered a Memorandum Order adopting the R&R, granting the motion to dismiss, and dismissing as untimely the petition. (ECF No. 14). The case was then closed.

On September 11, 2019, the Court received from Mr. Ryan a “Motion for First Extension of Time to File Petitioner’s Reply/Answer/Objections to the Magistrate’s Report and Recommendation.” (ECF No. 15). Although the envelope was postmarked September 9, 2019, the actual document was dated August 25, 2019. The Court, therefore, extended the benefit of the prisoner mailbox rule to Mr. Ryan and granted an extension until October 25, 2019, to file objections to the Report and Recommendation. The Order adopting the R&R filed September 5, 2019 (ECF No. 14) was vacated and the Clerk of Court was directed to reopen the case. (ECF No. 16).

Again, the time for filing objections has passed, and Mr. Ryan has not filed any objections nor sought any further extensions of time in which to do so. If a party does not file timely objections to a magistrate judge’s report and recommendation, the party may lose its rights to *de novo* review by the district court, although the court must still give “reasoned consideration” to the magistrate judge’s report and recommendation before adopting it.

As explained in the Order of September 5, 2019, Ryan’s sentence became final on May 27, 2016. He filed a timely PCRA petition, which tolled the AEDPA statute of limitations, but 248 days had passed before the statute of limitations was tolled. The tolling period ended on March 18, 2019, when the Pennsylvania Supreme Court denied Ryan’s petition for allowance of

appeal. Ryan only had 17 days left to file his federal habeas petition, or by April 5, 2017. The Court agrees with the recommendation that nothing in the record supports a conclusion that equitable tolling is appropriate.

The Court has reviewed the matter and concludes that the R&R correctly analyzes the issue and makes a sound recommendation. Accordingly, after *de novo* review of the pleadings and documents in the case, together with the R&R, the following order is entered:

**AND NOW**, this 5<sup>th</sup> day of December, 2019:

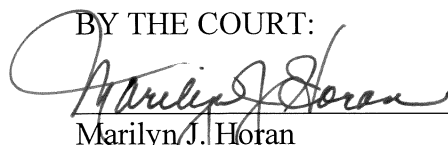
**IT IS HEREBY ORDERED** that Respondents' motion to dismiss is **GRANTED** and the instant Petition for Writ of Habeas Corpus is **DISMISSED** as untimely. Inasmuch as reasonable jurists would not find it debatable whether the instant petition is untimely, **IT IS FURTHER ORDERED** that no certificate of appealability shall issue.

The Report and Recommendation filed on August 13, 2019 (ECF No. 13) is **ADOPTED** as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

BY THE COURT:

  
Marilyn J. Horan  
United States District Judge

cc: RICHARD A. RYAN, MN-1998  
SCI MERCER  
801 Butler Pike  
Mercer, PA 16137  
(via U.S. First Class Mail)

Rusheen R. Pettit  
Office of Attorney General  
(via ECF electronic notification)